

The House Committee on Banks and Banking offers the following substitute to HB 864:

A BILL TO BE ENTITLED

AN ACT

To amend Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to pawnbrokers, so as to provide for the return of sales surplus to the pledgor of a motor vehicle title pawn transaction; to provide for a required principal reduction prior to the fourth continuation of a motor vehicle title pawn transaction; to provide for penalties; to provide for disclosures; to provide for a definition; to provide for related matters; to provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to pawnbrokers, is amended by striking subsection (a) of Code Section 44-12-131, relating to duration of pawn transactions and pawn transactions involving motor vehicles, and inserting in its place the following:

"(a)(1) All pawn transactions shall be for 30 day periods but may be extended or continued for additional 30 day periods. Notwithstanding any provision of this part to the contrary, prior to the commencement of the fourth extension or continuation of a motor vehicle title pawn transaction, and prior to the commencement of each successive extension or continuation thereafter, the pledgor or seller shall be required to make a payment of at least 5 percent of the original principal amount of the title pawn transaction in addition to interest and charges earned and authorized by this part. Principal reductions due at each extension or continuation shall be calculated on an aggregate basis over the entire term of the pawn transaction. Interest and charges authorized by this part at each successive extension or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the 5 percent required principal reduction shall be credited to the outstanding principal on the day received. If at the

1 commencement of any extension or continuation requiring a principal reduction, the
2 pledgor has not made previous principal reductions adequate to satisfy the current
3 required principal reduction, and the pledgor does not repay at least 5 percent of the
4 original principal balance as well as any outstanding interest and charges, the pawnbroker
5 may either, at its option, decline to further extend or continue the pawn transaction and
6 declare that the current maturity date is the final maturity date or extend the pawn for an
7 additional period and defer any required principal payment until a future payment date.
8 No further interest or pawnshop charges may accrue on any such principal amount so
9 deferred.

10 (2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during
11 a pawn transaction or during any extension or continuation of the pawn transaction.

12 (3)(A) Unless otherwise agreed, a pawnbroker has upon default the right to take
13 possession of the motor vehicle that is the subject of a motor vehicle title pawn
14 transaction and the right to resell such vehicle after the expiration of the grace period
15 provided for in subsection (b) of Code Section 44-14-403. In taking possession, the
16 pawnbroker or his or her agent may proceed without judicial process if this can be done
17 without breach of the peace or may proceed by action. Every aspect of the resale of a
18 motor vehicle repossessed by a pawnbroker, including the method, manner, time, place,
19 and other terms, must be commercially reasonable; provided, however, that a
20 pawnbroker may not purchase a motor vehicle repossessed pursuant to any pledge or
21 pawn of said motor vehicle in favor of said pawnbroker. For the purposes of this
22 subsection, a sale is commercially reasonable if the sale is made at any generally known
23 motor vehicle auction or the sale is otherwise in conformity with reasonable
24 commercial practices among dealers in used motor vehicles.

25 (B) A pawnbroker who repossesses and sells a motor vehicle held as security for a
26 pawn transaction shall, upon the sale of said motor vehicle, return to the pledgor or
27 seller any surplus remaining after the payment to the pawnbroker of all unpaid
28 principal, interest, and charges continued after maturity through the date of repossession
29 and calculated at the rate permitted in subparagraphs (A) and (B) of paragraph (4) of
30 this subsection, plus the expenses of repossession and sale actually and reasonably
31 incurred by the pawnbroker.

32 (4)(A) During the first 90 days of any pawn transaction or extension or continuation
33 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and
34 pawnshop charges which together equal no more than 25 percent of the principal
35 amount advanced, with a minimum charge of up to \$10.00 per 30 day period.

(B) On any pawn transaction which is continued or extended beyond 90 days, a pawnbroker may charge for each 30 day period interest and pawnshop charges which together equal no more than 12.5 percent of the principal amount advanced, with a minimum charge of up to \$5.00 per 30 day period. On any motor vehicle title pawn transaction prior to the commencement of the fourth extension or continuation of the motor vehicle title pawn transaction, there will be a required principal reduction payment as described in paragraph (1) of this subsection.

(C) In addition to the charges provided for in subparagraphs (A) and (B) of this paragraph, in a pawn transaction or in any extension or continuation of a pawn transaction involving a motor vehicle or a motor vehicle certificate of title, a pawnbroker may charge the following:

(i) A fee equal to no more than any fee imposed by the appropriate state to register a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a lien;

(ii) ~~No~~ If a pledgor or seller redeems their motor vehicle after repossession, no more than \$5.00 per day in storage fees, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession and only for each day the pawnbroker must actually retain possession of the motor vehicle; ~~and~~

(iii) ~~A~~ If a pledgor or seller redeems their motor vehicle after repossession, a repossession fee of \$50.00 within 50 miles of the office where the pawn originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300 miles and a fee of \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a default takes place on a vehicle which was not already in the pawnbroker's possession; ~~and~~

(iv) When calculating a surplus after sale of a pledgor's or seller's motor vehicle pursuant to subparagraph (B) of paragraph (3) of this subsection, the actual and reasonable expenses incurred by a pawnbroker in connection with the repossession and sale of a repossessed motor vehicle, not otherwise prohibited by law, including reasonable attorney's fees and other legal expenses.

(D) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and mailing costs, plus a handling fee equal to not more than 50 percent of the actual shipping and mailing costs.

(E) In the event the pledgor or seller has lost or destroyed the original pawn ticket, a pawnbroker may, at the time of redemption, charge a fee equal to not more than \$2.00.

(5) No other charge or fee of any kind by whatever name denominated, including but not limited to any other storage fee for a motor vehicle, shall be made by a pawnbroker except as set out in paragraph (4) of this subsection.

(6) No fee or charge provided for in this Code section may be imposed unless a disclosure regarding that fee or charge has been properly made as provided for in Code Section 44-12-138.

(7)(A) Any interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed by this subsection may be recovered by the pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

(B) In any such action in which the pledgor or seller prevails, the court shall also award reasonable ~~attorneys'~~ attorney's fees, court costs, and any expenses of litigation to the pledgor or seller.

(C) Before filing an action under this Code section, the pledgor or seller shall provide the pawnbroker with a written notice by certified mail or statutory overnight delivery, return receipt requested, that such an action is contemplated, identifying any fees or charges which the pledgor or seller contends are undisclosed, improperly disclosed, or in excess of the fees and charges allowed by this Code section. If the court finds that during the 30 days following receipt of this notice the pawnbroker made a good faith offer to return any excess, undisclosed, or improperly disclosed charges, the court shall award reasonable ~~attorneys'~~ attorney's fees, court costs, and expenses of litigation to the pawnbroker.

(D) No action shall be brought under this Code section more than two years after the pledgor or seller knew or should have known of the excess, undisclosed, or improperly disclosed charges."

SECTION 2.

Said part is further amended in subsection (a) of Code Section 44-12-137, relating to prohibited acts and penalties in pawn transactions, by striking "or" at the end of paragraph (7); by striking the comma at the end of paragraph (8) and inserting "; or"; and by adding new paragraph (9) to read as follows:

"(9) Fail to disclose the pledgor's or seller's right to receive any surplus remaining after payment to the pawnbroker of the outstanding pawn amount plus reasonable expenses of repossession and sale of a motor vehicle repossessed and sold in satisfaction of a pawn transaction,".

SECTION 3.

Said part is further amended by striking paragraphs (16) and (17) of subsection (b) of Code Section 44-12-138, relating to restrictions on advertising and disclosure statements in pawn transactions, and inserting in their respective places the following:

"(16) A statement that any costs to ship the pledged items to the pledgor or seller can be charged to the pledgor or seller, along with a handling fee to equal no more than 50 percent of the actual costs to ship the pledged items; and

(17) A statement that a fee of up to \$2.00 can be charged for each lost or destroyed pawn ticket; and

(18) A statement that the pledgor or seller has the right to receive any surplus remaining after payment to the pawnbroker of the outstanding pawn amount and the reasonable expenses of repossession and sale of a motor vehicle repossessed and sold in satisfaction of a pawn transaction."

SECTION 4.

Said part is further amended by adding a new paragraph to Code Section 44-12-130, relating to definitions applicable to pawnbrokers, to read as follows:

"(1.1) 'Motor vehicle title pawn transaction' means a pawn transaction wherein the pawnbroker maintains possession of a motor vehicle certificate of title, and not the actual motor vehicle, pursuant to paragraph (5) of this Code section."

SECTION 5.

This Act shall become effective on July 1, 2006, and shall apply to all motor vehicle title pawn transactions entered into on or after that date.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.